Approval of a Bridge Across the Babine River, near New Hazleton, BC

Complaint Investigation 950084

August 1999

FPB/IRC/20

Table of Contents

THE INVESTIGATION **1**

BACKGROUND 2

INVESTIGATION FINDINGS **4**

A. COMPLIANCE WITH CODE REQUIREMENTS 4

Opportunity for Public Review and Comment 4

B. FAIRNESS OF THE PROCESS 7

Consideration of Comments from the Public and the Ministry of Environment, Lands and Parks 7

Consistency of the Bridge Approval Decision with Other Public Planning Processes 11

Explanation of the Decision to Approve the Bridge 12

CONCLUSIONS **14**

RECOMMENDATIONS **15**

103-06330/

The Investigation

In August 1996, the Forest Practices Board (the Board) received a complaint about the construction of a bridge across the lower Babine River near its confluence with the Skeena River. Several potential locations for the bridge had been the subject of discussion and public planning meetings between government agencies, First Nations, and a number of public organizations for many years. A final location for the bridge was approved in March 1996 and construction began in August 1996. The approved location for the bridge was different from the location identified previously in public planning reports released in 1992 and 1994.

The complainant asked the Board: "...to investigate and determine why the bridge crossing was approved without undergoing the proper public review process, and to take appropriate action so that it does not occur again."

A July 23, 1996 letter to the Ministry of Forests regional manager, from the complainant, was submitted with the complaint. In the letter the complainant states:

> ... It is also my understanding that the Ministry of Environment has some serious problems with the location of this crossing with regards to habitat protection. It is my feeling that this "quick" approval is in contravention of the "due public process", as the concerns of this issue were not properly dealt with all parties involved....

A newspaper article that stated that the Ministry of Environment, Lands and Parks did not approve of the location of the bridge prompted the complainant's concerns, in part.

The complaint involved "due public process" in the approval of the bridge by the Ministry of Forests. The complainant was concerned that the process that led to the approval and construction of the bridge did not appear to be fair.

The process established in the Forest Practices Code (the Code) for the approval of major bridge crossings for forestry operations begins with the approval of a forest development plan by the Ministry of Forests district manager. Following that approval, a road permit to build the bridge must also be issued. Both the forest development plan and the road permit must meet the requirements of the Forest Practices Code. However, the Code only requires forest development plans to be made available for review by the public.

Before considering the assertions about the process, the Board considered whether the opportunity for public review of the forest development plan that permitted construction at the contentious bridge location complied with Code requirements. The Board then turned to the issues of fairness and due process raised in the complaint. In the Board's opinion, it is important that Code-related decisions follow a fair process. The element of fairness was important to the complainant and is a necessary part of sustaining public confidence in the administration of the Code.

In considering this assertion about the lack of a fair process, the Board's investigation focused on three main issues:

1. Were comments from the public and the Ministry of Environment, Lands and Parks considered in the decision to approve the bridge?

2. Was the approval consistent with decisions taken in other public planning processes?

3. Was the decision to approve the bridge clearly explained?

The period of this complaint is concurrent with the initiation of the *Forest Practices Code of British Columbia Act* (the Act). The Act was new to all parties (public, government, and licensees), and they were learning to apply the Act to forest practices, administration, and enforcement activities for the first time. Because the Act was new, preliminary interpretations and ongoing amendments contributed to many difficulties encountered by all parties in learning how to work with the new act. The investigation was also complicated by the fact that there were a series of staff turnovers involving regional and district staff in different sections or branches of both ministries. This made it more difficult to determine what had happened during the period in question.

Background

The Babine River is a major tributary of the Skeena River and one of the largest un-dammed rivers in British Columbia. The Babine area has extremely high resource values, and consequently, challenging resource management issues. The area is well known for its First Nation issues, significant moose and grizzly bear habitat, archaeological sites, and the Babine is considered the premier wild steelhead river in British Columbia. The combination of the steelhead, grizzly bear and moose populations makes the area extremely valuable for recreation. The Babine was designated as a Heritage River on April 23, 1996. On April 25, 1997, the *Kispiox Land and Resource Management Plan* (LRMP) was declared a higher level plan. Under the LRMP, the Babine River wilderness corridor was established as a Protected Area.

There are also extensive timber resources on the north side of the Babine River which contribute to Repap Carnaby Inc.'s (the licensee) operations. A lack of access to these timber resources had severely constrained the company's wood supply.

For a number of years, there had been considerable public discussion about the location of an access route to the north side of the Babine. Essential to the choice of an access route was the selection of a location for a bridge to cross the river. The provincial government established a planning process in 1988. In November 1991, a report entitled *Options for the Babine River Area* was released for public review. This options report outlined three land management alternatives and three access route alternatives.

In July 1992, the ministries of Forests and Environment, Lands and Parks jointly announced a series of decisions on a land use strategy and access route for the Babine River area. These were described in an information bulletin entitled *Decisions Made on Babine River Local Resource Use Plan.* The decisions were made after the ministries considered the results of the public review of the

options report. One of the important decisions involved access. The decision was stated in the information bulletin as follows:

> The Shenismike Creek route is approved, in principle, for the main access road to areas north of the Babine River within the Kispiox District. An alternative route involving a midstream bridge crossing of the Babine River near Gail Creek will not be built.
>
> The Shenismike Creek access route will not be built until an injunction over the Sam Green bridge crossing has been lifted and/or a suitable alternative is agreed upon with the Gitksan-Wet'suwet'en peoples.

According to this publicly announced decision, the main access road to areas north of the Babine River would follow a route known as the Shenismike Creek route. This route involved a crossing of the Babine River at Sam Green Creek. The crossing was located approximately 2.2 kilometres upstream from the confluence of the Babine and Skeena Rivers. This crossing is referred to in this report as the "Sam Green crossing."

In January 1995, government issued the *Babine River Interim Local Resource Use Plan* and a supplement entitled *Backgrounder*. These documents confirmed the 1992 "approval in principle" of the Shenismike Creek route and reiterated that the bridge would not be built until there was an agreement with the First Nations. The report stated that a co-ordinated access management plan (usually referred to as a CAMP) would be developed to address "access to the entire watershed."

On March 10, 1995, a forest development plan was advertised and made available for public review by the licensee. The plan showed two crossings of the Babine River. Option A on the forest development plan was the Sam Green crossing that had been described in the options report in 1992. The second crossing, Option B in the forest development plan, was located much closer to the confluence of the Skeena and Babine rivers. In this report, it is referred to as the "confluence crossing." In the plan, the licensee stated that this confluence crossing (Option B) was the company's preferred site, chosen to avoid archaeological and environmental concerns at the Sam Green crossing location. The confluence crossing is approximately 2.2 kilometres downstream from the Sam Green location and approximately 250 metres upstream from the confluence with the Skeena.

The acting district manager of the Kispiox Forest District approved the forest development plan on September 28, 1995. However, approval was not granted for any roads or cutblocks in the Sam Green chart area, which included both crossing locations. The approval letter stated that approval of the chart area and the crossing were withheld until consultation with First Nations was complete.

On March 29, 1996, a different acting district manager approved the remaining portions of the forest development plan, including the approval of the bridge crossing at the confluence site (Option B).

Soon after that approval, Repap Carnaby Inc. applied for a road permit to authorize the construction of the bridge. On June 10, 1996, the road permit was approved. Road and bridge construction began almost immediately.

On July 17, 1996, the *Interior News* in Smithers published an article entitled "Babine Bridge Crossing Challenged." The article stated that the Ministry of Environment, Lands and Parks did not support the approved bridge location because of the impact on wildlife habitat. A ministry representative was quoted as saying that there were better locations for the bridge than at the confluence of the Skeena and Babine rivers. The Ministry of Forests district manager was quoted as saying, "the opportunity for special interest groups and members of the public to comment on these kinds of things is through the FDP process, which are made available for public review." Shortly after the article appeared, the complaint was filed.

Investigation Findings

A. Compliance with Code Requirements

The Code has specific requirements regarding public review and comment that are relevant to this investigation. The Board considered whether the forest development plan that contained the contentious bridge location, complied with these requirements.

Opportunity for Public Review and Comment

On March 10, 1995, the licensee submitted its 1995-1999 Forest Development Plan for Forest Licence A-16831 to the Ministry of Forests. The plan illustrated two locations for the bridge crossing (Option A and Option B). The text of the plan noted that the company was proposing Option B, the crossing at the confluence of the Skeena and Babine rivers. A notice about the forest development plan was placed in the local newspaper and the plan was available for public review and comment from March 8, 1995, until May 31, 1995, a period exceeding 60 days. This advertising of the plan and the public review period preceded the introduction of the Forest Practices Code in June 1995.

The acting district manager approved the forest development plan on September 28, 1995, three months after the introduction of the Code. The approval stated that cutblocks accessed by the Sam Green crossing were not approved. Approval of these blocks, and the bridge across the Babine River to access them, was withheld until consultation with First Nations groups was complete.

On March 29, 1996, a different acting district manager approved the remaining portions of the 1995-1999 Forest Development Plan. By approving the remaining portions of the plan, this approved the bridge crossing at the confluence site, the company's preferred location for the crossing. For the purposes of the Forest Practices Code and this investigation, this was the date of approval of the location of the bridge crossing.

Part 11 of the Act describes the provisions to be applied during the two-year period of transition to full implementation of the Code. Specifically, section 230(3) states that if a district manager approves a forest development plan during the 18 month period after December 15, 1995, the plan must meet the public review and comment requirements of the Code. The portion of the

plan that contained the proposed bridge crossing was approved after December 15, 1995, and was therefore required to meet the review and comment provisions of the Code.

Review and comment requirements are found in the *Operational Planning Regulation.*

Section 4(1) of the *Operational Planning Regulation* required the licensee to "provide adequate opportunity" for the public to review the plan and provide comments. The plan must be available for a period of at least 60 days. A notice about the forest development plan was placed in the local newspaper and the plan was available for public review and comment from March 8, 1995, until May 31, 1995, a period exceeding 60 days.

Finding 1:

The public was given an opportunity to provide comment on the licensee's 1995-1999 Forest Development Plan. The plan illustrated two locations for the bridge crossing (Option A and Option B). The text of the plan noted that the company was proposing Option B, the crossing at the confluence of the Skeena and Babine rivers. This plan, which depicted the bridge location, was made available to the public for review and comment for more than 60 days, meeting the notice requirements of section 4(1) of the *Operational Planning Regulation.*

The Board also considered whether the approval of the remaining portions of the plan in March 1996 required re-advertisement of the opportunity for public review and comment.

The content of the remaining portions of the forest development plan had not changed since the original advertisements on March 1, 1995, and March 8, 1995. Therefore, the remaining portions of the plan were not an amendment, which would have required re-advertising.

Finding 2:

The advertisement of the 1995-1999 Forest Development Plan in March 1995 met the notice requirements of the Code. There was no need to re-advertise the plan prior to approval of the remaining portions of the plan, including the bridge location, in March 1996.

Section 4(1) of the regulation requires a licensee to ensure that an adequate opportunity to comment is provided to persons interested or affected by operations under the plan. Section 4(4) gives the district manager responsibility to verify that opportunity. The opportunity provided by the licensee can only be adequate if, in the opinion of the district manager, the opportunity is "commensurate with the nature and extent of that person's interests in the area or any right that person may have to use the area under the plan."

The complainant operates a wilderness river rafting business on the Babine River. The comments received by the licensee in response to the public review and comment period did not contain a submission from the complainant nor from any other member of the public regarding the location of the bridge. However, the Ministry of Forests recorded the complainant's concern

with the bridge location as part of a co-ordinated access management plan (CAMP) meeting on September 21, 1995. The complainant was noted saying that the confluence was an important camping spot and viewing point for bears. Nevertheless, the CAMP meeting was not part of the public review and comment process under the Code.

The acting district manager's decision was not made until March 31, 1996. The acting district manager stated that he was aware of the complainant's use of the area. There is no written evidence or rationale that would explain how the acting district manager considered the environmental or business interests of the complainant or the adequacy of the review period. Additionally, there is no evidence that would indicate that the complainant was expressly aware that the March 1995 review period was his opportunity to make his concerns known. The Ministry of Forests did not notify him. The complainant stated that he did not know that this was an avenue open to him. The complainant learned of the approved bridge location when the location was marked along the river. The location of the bridge has directly affected the complainant's business and he has relocated a camping area as a result.

Finding 3:

Section 4(1) of the *Operational Planning Regulation* requires that the licensee ensure that the opportunity to review the plan and provide comments is adequate for persons interested or affected by operations under the plan. The complainant had interest in and was affected by the operations under the plan. The licensee under section 4(1), and the acting district manager (who approved the plan on March 31, 1996) under section 4(4), were both required to consider those interests. The Board finds that the evidence is not sufficient to show that the opportunity was adequate.

On April 4, 1996, one week after the remaining portions of the 1995-1999 plan were approved, the 1996-2000 Forest Development Plan was advertised for public review and comment. The 1996-2000 Forest Development Plan identified the road and bridge location only as proposed development. It is unlikely that the licensee knew that approval of the remaining portions of the 1995-2000 Forest Development Plan was imminent. This situation may reasonably have led the public to believe that the approval of the bridge location was still undecided.

The district manager stated that prior to issuing the road permit on June 10, 1996, comments from the recently advertised 1996-2000 Forest Development Plan were reviewed and considered, and no comments regarding the crossing location were received. There is no Code requirement to make road permits available for public review and comment. On July 23, 1996, the complainant sent a letter to the Ministry of Forests regional manager indicating that he was aware of the road permit approval and that he had concerns. By that time, however, the road permit had already been approved.

Finding 4:

The district manager's review of the 1996-2000 Forest Development Plan comments, prior to approving the road permit, was a constructive measure. This measure helped moderate possible confusion created by the advertising of the 1996-2000 Forest Development Plan, which identified the approved bridge location as proposed development.

B. Fairness of the Process

The process of approval for forest development plans should both be fair and be seen to be fair, from a public perspective. This was the main concern of the complainant in this case.

In assessing whether the process was fair, the Board examined three questions:

1. Were comments from the public and the Ministry of Environment, Lands and Parks considered in the decision to approve the bridge?
2. Was the approval consistent with decisions taken in other public planning processes?
3. Was the decision to approve the bridge clearly explained?

Consideration of Comments from the Public and the Ministry of Environment, Lands and Parks

No comments regarding the proposed crossing were received from the public in response to the March 1995 advertising of the 1995-1999 Forest Development Plan. The complainant made comments during a CAMP meeting in September 1995. This was well after the review and comment period, but prior to the approval of the 1995 plan.

There were written comments from the Ministry of Environment, Lands and Parks because the proposed location of the bridge involved impacts on the significant wildlife values of the area, particularly moose and grizzly bear. Normally, the Ministry of Forests seeks formal comments from the Ministry of Environment, Lands and Parks on forest development plans through a "referral process" under section 6 of the *Operational Planning Regulation.*

In April 1995, a copy of the forest development plan was offered to the Ministry of Environment, Lands and Parks forest ecosystem specialist in the Kispiox office for review. This position had just been established and, because of workload issues and unfamiliarity with forest development plans, the forest ecosystem specialist declined to review the plan and chose to concentrate on other initiatives. The regional office supported this decision. Ministry of Environment, Lands and Parks staff anticipated that there would be opportunities to make comments on the bridge at a later date.

The forest ecosystem specialist was under the impression that the bridge crossing site would not be approved until a total resource plan was completed. The forest ecosystem specialist was also

aware that a consultation process with the Gitskan First Nation was required. The Ministry of Environment, Lands and Parks did not expect any imminent decisions and did not provide formal comments on the forest development plan to the acting district manager.

Although they made no formal comments as part of the referral process on the plan, Ministry of Environment, Lands and Parks staff did discuss the proposed bridge locations with Ministry of Forests staff on several occasions between April 1995 and the spring of 1996. Staff also visited the site. The Ministry of Environment, Lands and Parks did indicate in correspondence to the Ministry of Forests that they had serious concerns about the licensee's preferred bridge site at the confluence.

On December 14, 1995, a regional staff person from the Ministry of Environment, Lands and Parks sent a letter to the Kispiox Forest District stating that there were several fundamental problems with the road and bridge location that had not been addressed. The letter stated that the Habitat Section had not had an opportunity to provide comments on a referral for the bridge location, as one had not been submitted to them. It stated that the ministry objected to the crossing at the confluence site and preferred the Sam Green site. A rationale for not using the Sam Green site was requested. The letter also identified four things that the Ministry of Environment, Lands and Parks believed were needed before the bridge could be approved - consultation with First Nations, comments from the CAMP process, an archaeological study, and comments from the Ministry's Habitat Section. The letter concluded that the Ministry of Environment, Lands and Parks would provide no further comments until those four matters had been addressed; they asked to be kept informed about the situation. The discussions between the Ministry of Environment, Lands and Parks and Ministry of Forests involved several different people due to staff changes in both ministries.

Finding 5:

The acting district manager knew, or should have known, by the end of December 1995 that the Ministry of Environment, Lands and Parks had serious concerns and opposed the crossing at the confluence site. The Ministry of the Environment, Lands and Parks had identified four issues to be addressed and requested consultation prior to approval of the bridge location.

The Ministry of Environment, Lands and Parks should also have recognized by this time that there was a potential for serious inter-ministry conflict over the bridge location.

The regional offices of the two ministries have a *Memorandum of Understanding Regarding Joint Administration of the Forest Practices Code* (Memorandum of Understanding), which describes the relationship between the ministries regarding the implementation, monitoring, and enforcement of the Code. The memorandum includes a dispute resolution procedure that is to be used in circumstances where staff is in disagreement. The dispute resolution process could have assigned specialists to study the disagreement and provide both technical information and possible recommendations. The district manager would then have had that information

available. That would not have deterred or restricted the decision-maker. The dispute resolution process would have provided information, not direction, to decision-makers.

The dispute resolution process requires that line managers file a dispute with their respective regional managers/directors. The Memorandum of Understanding states: "Until a dispute is resolved through the resolution process, normally none of the ministries involved in the dispute should take action under the Code."

In this case, there was clearly a difference of opinion about the best location of the crossing. Also, there was a misunderstanding about the imminence of approval and the process for the Ministry of Environment, Lands and Parks to comment on the plans for the crossing. Despite this significant disagreement, neither ministry requested use of the dispute resolution process. The Board's opinion is that the evidence illustrates several opportunities where both ministries should have considered using the dispute resolution process. The key opportunities occurred on December 14, 1996, upon receipt of the Ministry of Environment, Lands and Parks' letter; during the interval of March 4 to March 29, 1996, prior to development plan approval; and on June 6, 1996, the day the road permit was approved.

Finding 6:

Both ministries should have recognized that the disagreement about the bridge location was a major disagreement involving significant resource values and past public interest at a controversial site. They should have implemented a dispute resolution procedure established in an inter-ministry memorandum of understanding.

On March 4, 1996, the acting district manager sent correspondence to the Ministry of Environment, Lands and Parks stating that that ministry's concerns with the bridge location had been met. On March 29, 1996, the acting district manager approved the forest development plan and the bridge crossing at the confluence of the Babine and Skeena rivers, presented as the preferred crossing in the plan.

Soon after the plan was approved, the licensee submitted the application for a road permit. In April 1996 a new district manager was hired. On May 6, 1996, the road permit application was referred to the Ministry of Environment, Lands and Parks. Prior to the road permit being approved, the new district manager and the forest ecosystem specialist looked at the site from a helicopter. On June 10, 1996, Ministry of Environment, Lands and Parks staff responded to the referral with a letter which stated:

> It is the judgement of BC Environment that the licensee proposing the bridge crossing and road locations …has not adequately considered the impacts of this proposed development on the grizzly bear and other wildlife populations inhabiting the area…It is the conclusion of BC Environment that other options for bridge and road location exist and that the proponent…conduct a more thorough evaluation of potential options.

The new district manager received the letter on that same day that she approved the road permit. The district manager stated that she was aware of Ministry of Environment, Lands and Parks' concerns with the bridge location.

Finding 7:

Failure to implement the dispute resolution process led to the approval of the bridge crossing site in the forest development plan, and an approval of a road permit, before the concerns of the Ministry of Environment, Lands and Parks had been adequately resolved.

The decision to approve the plan and the bridge location, while complying with the Code, did not address the Ministry of Environment, Lands and Parks' concerns about the potential impacts on wildlife habitat. This led to the complainant's perception that the process was not fair.

Following the approval of the road permit, the Ministry of Environment, Lands and Parks continued to be opposed to the confluence location. There was further correspondence and two meetings between the ministries. Shortly afterwards, the dispute became public with the article in the Smithers *Interior News*.

Finding 8:

The disagreement between the ministries and the failure of both ministries to implement the *Memorandum of Understanding* to resolve the dispute subsequently became public knowledge through a newspaper article.

The Board is concerned that there may be potential for this situation to recur in the Skeena Region. The Ministry of Environment Lands and Parks, Skeena Region, has decided to limit forest development plan reviews in other districts within the region. Staff are directing their efforts towards content of higher level plans, not forest development plans. As a result, the Ministry of Environment, Lands and Parks is not fully reviewing forest development plans in the Skeena Region, and in some districts the ministry provides no comments. Furthermore, a reduction of staff in the regional office is adding to the workload of the forest ecosystem specialists, further limiting their ability to review forest development plans.

Finding 9:

The Ministry of Environment, Lands and Parks has chosen to conduct limited five-year forest development plan reviews in some districts in the Skeena Region, and in some cases does not comment on forest development plans. This replicates the conditions that led to this complaint and there is a potential for a similar situation to occur in future.

Consistency of the Bridge Approval Decision with Other Public Planning Processes

In addition to the public review of forest development plans, there were at least three other public planning processes that had considered, or were considering, the location of a bridge across the Babine. Two of those processes were complete. These were the 1991 *Options Report*, and the 1995 *Babine River Interim Local Resource Use Plan* (Babine LRUP). Additionally, the ongoing Co-ordinated Access Management Planning process was underway.

None of the earlier plans were declared higher level plans in the context of the Code. Therefore, there was no legal requirement that the crossing location be consistent with them. There was, however, significant public input into each of them. In the Board's view, a fair process requires that the district manager's decision consider the reports of these planning processes as important guidance.

Both the *Options Report* and the *Babine River Interim Local Resource Use Plan* stated a preference for the Sam Green location, provided that consultation had been concluded with the Gitskan First Nation. Both reports recognized that alternative locations might be required. The *Options Report* stated that the location was approximate. Page vi of the *Babine River Interim Local Resource Use Plan* states: "Adjustments to the plan may also be required to address site-specific conditions noted in total chance plans. However, these changes will not compromise sub-drainage objectives identified in the Babine LRUP."

The Babine River Interim Local Resource Use Plan states on page 34:

> Revisions to the plan may be required:
>
> To address emerging issues related to the access of timber north of the Babine River within the Kispiox Forest District, if the present impediment to an access of the area is not resolved within a period of one year…

The *Babine River Interim Local Resource Use Plan* states that resource development plans, including five-year operational plans, would have to comply with both it and access management plans. A January 18, 1995 document entitled *Backgrounder - Babine River Interim Local Resource Use Plan* (Backgrounder) also states that the operational plans would be available for public viewing on an annual basis, prior to their approval by the Ministry of Forests.

In addition, the backgrounder stated that public input, comments and observations would continue to be an important part of the process. The backgrounder noted that a major review of

the plan would be conducted at least every five years with public input on any proposed plan revisions.

The acting district manager stated that he considered the *Babine River Interim Local Resource Use Plan* and the *Options Report* in making the decision.

Finding 10:

The *Options Report* and *Babine River Interim Local Resource Use Plan* recognized that the location of the Babine bridge was approximate and that other alternatives could be considered.

The approval of the bridge crossing at the confluence site was consistent with the direction provided in these two reports, being located outside of a wilderness corridor. The change in location of the bridge site from what was suggested in public planning documents should have been subjected to additional public input, as promised by the Babine LRUP document prior to the development plan approval.

Both the *Options Report* and the *Babine River Interim Local Resource Use Plan* made reference to the initiation of a co-ordinated access management plan (CAMP) for the area. To date, a CAMP for the area in the Kispiox District has not been completed. The Ministry of Forests has decided to incorporate the partial and unfinished results of the CAMP process into a broader landscape unit planning process for the area and decided not to complete the CAMP. In the interim, forest development planning is being used as the forum for access management planning and decisions.

Explanation of the Decision to Approve the Bridge

The March 29, 1996 letter, which approved the confluence site in the forest development plan, states: "Reference is made to your five-year development plan submission dated March 10, 1995. Please be advised that the five-year development plan for the Sam Green Chart is hereby approved."

The plan illustrated two locations for the bridge crossing. The text of the plan noted that the company was proposing the confluence crossing as its preferred option. The approval letter does not indicate which of the two crossings options was being approved. The licensee, upon receiving the approval letter interpreted it as approving their preferred site, Option B, at the confluence. The licensee promptly submitted a road permit application.

In the Board's opinion, the decision of the district manager should have contained some explanation. An explanation or rationale was required to provide guidance and certainty to the licensee, the ministries and the interested public.

Finding 11:

The acting district manager's letter of March 29, 1996, approving the remaining portions of the 1995-1999 Forest Development Plan did not state that the bridge crossing at the Babine confluence was specifically approved and did not provide a rationale for the decision.

The approval letter should have explicitly stated why the Option B crossing of the Babine River was approved and should have included the reasons for the decision.

The public was not informed of the decision to approve the remaining portions of the development plan. This is not a requirement of the legislation and is also consistent with normal Ministry of Forests practice. The Ministry of Forests is not required to, and does not normally, notify the public when a forest development plan is approved.

The location of the Babine bridge was an important decision, which followed many years of public interest in the significant resource values at a controversial site (as evidenced by the *Options Report, Babine River Interim Local Resource Use Plan* and CAMP process). In the Board's view, interested members of the public should not have had to rely on the licensee's forest development plan text to provide the only indication of a decision in this controversial area and the only explanation for the decision.

Finding 12:

The choice to not publicly communicate the decision to approve the bridge location led to the perception of an unfair process, particularly when the disagreement between two important ministries subsequently became public knowledge.

Members of the general public, and particularly individuals with a known interest in the site, should have been advised of the decision to approve the bridge and provided with reasons for the choice of the confluence location.

An explanation would have contributed to greater public understanding of the issues involved in applying the Forest Practices Code and choosing the bridge location.

Conclusions

Compliance with Code Requirements

The opportunity for public review and comment on Repap Carnaby Inc.'s 1995-1999 Forest Development Plan, which included options for the Babine River bridge location, met the notice provisions of the *Forest Practices Code of British Columbia Act.*

The Code requires that an adequate opportunity to review and provide comment on forest development plans must be provided to the public. In addition, persons interested in, or affected by, operations proposed in the plan must also be provided with an adequate opportunity to provide comments. The Board concludes that the evidence is not sufficient to show that the opportunity for interested or affected persons to review and provide comment on this plan, which included two options for the Babine River bridge location, was adequate.

Consideration of Comments from the Public and Ministry of Environment, Lands and Parks

Both the Ministry of Forests and the Ministry of Environment, Lands and Parks failed to implement a dispute resolution procedure. This procedure was described in a *Memorandum of Understanding* and was intended to be implemented before Code actions or decisions were taken, when there was a significant disagreement between the ministries.

The acting district manager approved the forest development plan before the significant disagreement with the Ministry of Environment, Lands and Parks was resolved. Although the approval complied with the Code, it created an appearance that the decision-making process was not fair and reduced public confidence in the administration of the Code.

The current management approach by the Ministry of Environment, Lands and Parks, Skeena Region, limits reviews of forest development plans by field staff. This has created the potential for a similar situation to occur.

Consistency with other Public Planning Processes

The change in location of the bridge site from what was suggested in public planning documents should have had additional public input, as promised by the Babine LRUP document, prior to the forest development plan approval.

Explanation of the Decision to Approve the Bridge

The acting district manager's decision to approve the remaining portions of the forest development plan in March 1996 did not explicitly identify that the crossing of the Babine River at the confluence was approved and did not provide a rationale for the decision. Due to the magnitude of the decision and the public interest in this issue, the approval letter should have explicitly stated that the crossing at the confluence was approved and should have included the reasons for the decision.

The acting district manager did not announce or explain his decision to approve the crossing to those members of the public who had expressed interest in the location and participated in public planning processes over several years. The decision to not publicly communicate the approval for the bridge location contributed to a perception of an unfair process, particularly when the disagreement between two ministries became public knowledge.

The general public, and particularly the individuals with a known interest in the site, should have been advised of the decision to approve the bridge and provided with reasons for the choice of the confluence location.

Recommendations

In accordance with section 185 of the *Forest Practices Code of British Columbia Act* (the Act), the Board makes the following recommendations:

1) The Ministry of Forests, Prince Rupert Region and the Ministry of Environment, Lands and Parks, Skeena Region, should update the regional *Memorandum of Understanding Regarding Joint Administration of the Forest Practices Code*. The memorandum should provide a contingency for any inability by the Ministry of Environment, Lands and Parks to respond to referrals.

   The memorandum should stipulate how decision-makers (district managers) should apply section 41(1)(b) of the Act when information or input from the Ministry of Environment, Lands, and Parks is not provided.

   Both ministries should provide direction to decision-makers regarding the use of the *Memorandum of Understanding* and its conflict resolution measures, with the expectation that it will be enacted, especially in the case of inter-ministry disagreements.

2) The Ministry of Environment, Lands and Parks, Skeena Region, should assess the risk to resource management caused by the current practice of limiting review of forest development plans. The Ministry of Environment, Lands and Parks should advise the public about its ability to review forest development plans and explain how it manages the risks created by limited review of forest development plans.

3) The Ministry of Environment, Lands and Parks should clarify how forest development plans and other operational plans referred to the ministry will be reviewed whenever forest ecosystem specialist positions are vacant.

4) Due to the significance of the decision to approve forest development plans, statutory decision-makers should record and retain specific reasons for those approvals. The regional director of the Ministry of Environment, Lands and Parks and the regional manager of the Ministry of Forests should advise the statutory decision-makers that potentially contentious decisions to approve forest development plans require a clear written rationale.

5) Decisions that follow significant public interest and involvement should be publicly communicated. Individuals with a known interest or who are directly affected by a decision should be advised of those decisions.

In accordance with section 186 of the Act, the Board requests that the Ministry of Forests, Prince Rupert Region, and the Ministry of Environment, Lands and Parks, Skeena Region, advise the Board by October 31, 1999, about how they have addressed recommendations 1, 4 and 5.

In addition, the Board requests that the Ministry of Environment, Lands and Parks, Skeena Region, advise the Board by October 31, 1999, about how it has addressed recommendations 2 and 3.